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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SANFORD S. WADLER, an individual,

Plaintiff,

v.

BIO RAD LABORATORIES, INC., a Delaware corporation; Norman Schwartz; Louis Drapeau; Alice N. Schwartz; Albert J. Hillman; Deborah J. Neff,

Defendants.

Case No. 3:15-CV-2356 JCS

DEFENDANTS' BENCH BRIEF REGARDING MR. WADLER'S TESTIMONY

Trial Date: January 17, 2016

Time: 8:00 a.m.

Place: Courtroom D, 15th Floor

Judge: The Honorable Joseph C. Spero

Defendants respectfully submit this bench brief regarding Mr. Wadler's testimony on January 19, 2017. As this Court is aware, prior to calling in the jury on Thursday, January 19, 2017, the Court heard Defendants' request to reconsider its ruling to exclude evidence of Mr. Wadler's internet searches for lawyers that began in December 2012. [Dkt. 166.] Defendants argued that Mr. Wadler opened the door to evidence of these searches when he testified that he had no concern about his employment as of December 2012 because he received the "best review [he] had ever gotten," that he would have been "crazy" after getting his review to think his job was at risk, and that he was shocked by his termination. *E.g.*, Tr. at 211:7-9, 221:11-17, 332:18-333:13; *see also id.* at 492:22-493:6.

After lengthy argument – all of which Mr. Wadler observed firsthand – the Court asked Mr. Wadler's counsel if there was any dispute that the searches included employment lawyers:

> THE COURT: Is there any dispute that these are employment lawyers?
>
> MR. WAGSTAFFE: I think there is, Your Honor. Mr. Axelrod -- I mean, I don't have the list in front of me, Your Honor.
>
> THE COURT: So, I'm not accepting that. I want a representation right now. Is there any genuine dispute that the search that we're talking about was for employment lawyers?

Tr. at 424:18-24.

Upon the Court's request for a direct representation on this point, Mr. Wadler's counsel conferred with Mr. Wadler. *See* Tr. at 424:25-425:3. After consulting with his client, Mr. Wadler's counsel said he could not represent that any dispute existed: "MR. WAGSTAFFE: I'm not able to make that representation." Tr. at 425:4. When the Court asked for clarification, Mr. Wadler's counsel clarified and stated affirmatively that Mr. Wadler did not dispute that the internet searches were for employment lawyers:

> THE COURT: ... So, the representation, I don't know what you mean by that.
>
> MR. WAGSTAFFE: What I mean --

> THE COURT: Is there any dispute -- and I need to know whether there is a dispute -- that the internet searches were for employment lawyers?
>
> MR. WAGSTAFFE: I'm not disputing that.

Tr. at 425:14-19.

On the basis of this representation, the Court allowed Defendants to ask Mr. Wadler targeted questions regarding whether he searched for employment lawyers beginning in December 2012. Tr. at 433:22-434:16. The Court explained that Mr. Wadler could provide on re-direct an explanation for the employment lawyer searches that was consistent with his earlier testimony that he was shocked by his termination.

Despite the representations to this Court that no dispute existed on this issue of whether Mr. Wadler searched for employment lawyers, Mr. Wadler then repeatedly testified under oath that a dispute existed on the very issue for which he told the Court there was no dispute.

> Q. But, in fact, Mr. Wadler, isn't it true that you conducted internet searches for employment lawyers beginning in December 2012, right around the time of your employment review?
>
> A. No.
>
> Q. That's not true?
>
> A. No.
>
> Q. Did you ever conduct internet searches for employment lawyers, Mr. Wadler?
>
> A. Not employment lawyers.

Tr. at 493:7-15; *see also* Tr. at 503:14-504:4, 507:3-14.

Thus, the record before the Court on this issue is captured in the following table:

Mr. Wadler's Representation to the Court	Mr. Wadler's Testimony to the Jury
"THE COURT: Is there any dispute -- and I need to know whether there is a dispute -- that the internet searches were for employment lawyers? MR. WAGSTAFFE: I'm not disputing that." Tr. at 425:116-19.	"Q. Did you ever conduct internet searches for employment lawyers, Mr. Wadler? A. Not employment lawyers." Tr. at 493:13-15.

In light of this inconsistency, Defendants respectfully submit that an appropriate remedy would be to allow Defendants to read into evidence, during their case-in-chief, Mr. Wadler's representation to the Court, through his counsel, that there was no dispute that he conducted internet searches for employment lawyers (Tr. at 425:116-19), as if it were an admission by Plaintiff in a discovery response.

DATED: January 23, 2017

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By *_/s/ John M. Potter_*
John M. Potter

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